IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 140 of 1996.

Judgement reserved on: 1.8.2007.

Date of decision: 3.8.2007.

Ram Singh ….. **Appellant.**

Vs.

Daulat Ram & anr. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. B.K.Malhotra, Advocate.

For the Respondents : Mr. Rajesh Mandhotra, Advocate, for respondent No.1.

Kuldip Singh, Judge.

The plaintiff is in appeal against judgement, decree dated 1.11.1995, passed by the District Judge, Mandi, Kullu and Lahual-Spiti Districts at Mandi, in Civil Appeal No. 28 of 1992, accepting the appeal and setting aside preliminary decree passed by the Sub Judge, Court No.2, Mandi in Civil Suit No. 86 of 1990. The parties are referred in the same manner, as in the trial court.

2. The brief facts of the case are that plaintiff filed a suit for rendition of accounts against defendants alleging that the parties entered into an agreement to install a saw-mill jointly for which Rs. 5,000/- were contributed by each partner and the saw-mill was

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Whether the reporters of the local papers may be allowed to see the Judgment?

installed at Bali Chowk. There was an oral agreement between the parties that each of the partner shall share the loss and profit in equal shares. The defendant No.1 borrowed Rs. 1000/- from Chakurtha, Cooperative Agriculture Service Society on behalf of plaintiff and invested this amount in the business of the sawmill. According to the plaintiff his capital in the business of the partnership became Rs.6000/-. The defendants without the consent and permission of the plaintiff sold the sawmill to one Sham Singh for a consideration of Rs. 30,000/-, but they did not render the account. On these grounds, the plaintiff filed the suit for rendition of account and prayed for passing of preliminary decree.

3. Defendants contested the suit by filing written statement and took preliminary objection of maintainability of the suit, limitation, locus-standi of the plaintiff to file the suit. On merits, they have alleged that 18-20 years ago, the parties had orally agreed to install a sawmill and the same was installed. The sawmill suffered losses after two years of its installation. The plaintiff and defendant No.2 withdrew from the partnership and share of the plaintiff and defendant No.2, profit and loss was paid back to them. The defendant No.1 is the sole proprietor of the business for the last 16-17 years. It has been denied that loan was taken from Chakurtha Cooperative Agriculture Service Society by the plaintiff and was invested in the sawmill. The sawmill was sold to Sham Singh, who is in exclusive possession thereof. The defendants prayed for dismissal of the suit.

4. The learned Sub Judge had passed preliminary decree for rendition of accounts in favour of the plaintiff and against the

defendants on 30.1.1992. The defendant No.1 filed appeal, which was allowed by the District Judge on 1.11.1995. The plaintiff has filed this appeal against judgement, decree dated 1.11.1995. The name of respondent No.2 was deleted vide order dated 3.12.1996 of this court.

5. The appeal has been admitted without framing any substantial question of law on 3.12.1996, though the substantial questions of law which are at page-6 of the paper book. The District Judge has allowed the appeal and held that in view of Section 69 of the Indian Partnership Act (for short, the Act), the suit could not have been decreed for want of registration of firm. The learned counsel for the parties have agreed and addressed arguments on the following substantial question of law:-

> Whether suit for rendition of accounts of the dissolved firm by one of the partners against the other partners is maintainable in view of the provisions of sub section 3 of Section 69 of the Indian Partnership Act.

6. I have heard the learned counsel for the parties and gone through the record.

7. The learned counsel for the plaintiff has submitted that District Judge has not appreciated properly sub-section 3 of Section 69 of the Act. He has submitted that in the written statement, no specific plea of bar of Section 69 of the Act, has been taken and no issue to this effect has been framed. The issue No.1 is of maintainability and issue No.3 is of locus-standi of the plaintiff to file the suit. The perusal of the judgement of the trial court would show that even on these issues, the defendants did not address any

arguments regarding bar of Section 69 of the Act for filing the suit. In the grounds of appeal before the first appellate court also, no plea regarding bar of Section 69 of the Act for filing the suit has been specifically taken. On the contrary, the perusal of the written statement would show that defendants have pleaded that two years after the starting of the partnership business, the plaintiff and defendant No.2 withdrew from the said partnership business and share capital, investment, loss and profit were paid back to them by defendant No.1. This plea of the defendants is nothing but dissolution of the firm.

8. The Section 69 of the Act is as follows:-

> "***Effect of non-registration:-*** (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
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> (2) No suits to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.
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> (3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect:-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm; or

(b) the powers of an official assignee, receiver or Court under the Presidency- towns Insolvency Act, 1909 (3 of 1909), or the Provincial Insolvency Act, 1920 (5 of 1920), to realize the property of an insolvent partner.

(4) XXX XXXX XXXX

9. The defendant No. 1 has appeared as DW 1 and has stated that the parties established the sawmill in the year 1970-71, but two years thereafter the plaintiff and defendant No. 2 left the firm. The registration of the firm was not in issue. It is the specific stand of the defendants in their written statement and particularly in the statement of defendant No.1, that the firm ceased to exit two years after its constitution. In view of the stand of the defendants that the firm ceased to exist two years after it was constituted, they cannot be permitted to take the objection of bar of suit under Section 69 of the Act. The suit is for rendition of accounts. The parties were not at issue regarding the registration of the firm, therefore, the District Judge has erred in accepting the appeal on the ground that suit is barred by Section 69 of the Act. The bar of filing of suit by or on behalf of any person suing as a partner in a firm is not applicable under clause (a) of sub-section (3) of Section 69 of the Act when the suit is for accounts of a dissolved firm. The finding returned by the

District Judge regarding bar of suit, under Section 69 of the Act, is set-aside. The substantial question of law is accordingly answered in favour of the plaintiff.

10. The result of the above discussion is the appeal is allowed. The judgement and decree dated 1.11.1995 passed by the District Judge in Civil Appeal No. 28 of 1992, are set-aside. The appeal is remanded to District Judge, Mandi, with a direction to decide the appeal afresh in accordance with law. Keeping in view the fact that appeal was originally filed before the District Judge on 19.3.1992, he shall decide the appeal expeditiously preferably by 28.2.2008. The parties through their counsel are directed to appear before the District Judge, Mandi, on 1.9.2007.

August 3, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**